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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1008 OF 2005
IN
SUIT NO.2715 OF 2004

Bhargav Dilip Dholi)..Plaintiff

Versus

Smt.Chandrabala P. Dholi and others)..Defendants

Mr.A.P. Rege for the Plaintiff.

Mr.Prem S. Gidwani for the Defendants.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 1ST AUGUST 2006

P.C.:

. The Plaintiff has taken out the present Motion for appointing the Court Receiver in respect of the properties of his paternal grand-father, the late Premji Velji Dholi. An injunction has also been sought against the Defendants from creating any third party rights or selling or transferring or parting with the possession of the properties of late Premji Velji Dholi. A further direction is sought against the Defendants to furnish to the Plaintiff the statement of account of the estate of the late Premji Velji Dholi including the partnership firms, namely, Defendant Nos.16, 17 and 18.

2. The Plaintiff contends that he is the grandson of the late Premji Velji Dholi and the son of Defendant No.2. It appears that Defendant No.2 and the mother of the Plaintiff had matrimonial disputes due to which the Plaintiff's mother had to leave the matrimonial home along with the Plaintiff.

3. According to the Plaintiff, Premji Velji Dholi was the Karta and Manager of an HUF. Businesses had been established by Premji Dholi as Karta of the HUF. These businesses included Defendant Nos.16, 17 and 18 which are partnership concerns. Premji Dholi died intestate. The Plaintiff claims a right in the partnership concerns, namely, Defendant Nos.16, 17 and 18 and all other properties of Premji Dholi.

4. Defendant No.4, the uncle of the Plaintiff, has filed an affidavit opposing the Motion. Defendant No.4 has filed this affidavit on behalf of all other Defendants. According to Defendant No.4, Premji Dholi was not the Karta of any HUF and the properties which are claimed by the Plaintiff are not HUF properties. It is contended that Premji Dholi was a commission agent and in August 1963 he along with four other persons started a partnership firm in the name and style of M/s.Premji Odhavji and Company. According to Defendant

No.4, this firm was started by Premji Dholi in his individual capacity and not as a Karta of an HUF. The partnership firm, M/s.Dolji Brothers, i.e. Defendant No.17, was established in 1979 with Defendant Nos.1, 2, 3 and 4 as partners. Defendant No.18, M/s.Dilip Kumar and Company, was established in January 1978 with Defendant Nos.1 to 4 and 8 as the partners. It is contended that all these partnership concerns maintain their separate accounts and file income tax returns separately. According to Defendant No.4, the immovable properties which are mentioned in paragraph 12 of the affidavit filed by him were not purchased by Premji Velji Dholi. These properties were purchased either after the death of Premji Dholi by the partnership concerns or by individual partners out of their personal funds.

5. Undisputedly, all these concerns, namely, Defendant Nos.16, 17 and 18, are all grain merchants. The partnership concern, M/s.Premji Odhavji and Company, Defendant No.16, was established with Premji Dholi and four other persons as its partners. In course of time, some of these partners retired and others from the family i.e. some of the Defendants were inducted as partners. Premji Velji Dholi retired from this partnership in 1992. The other Defendant firms, namely, Defendant Nos.17 and 18, were established during the

life time of Premji Dholi and there is nothing on record to show that these firms were established with the individual funds of the partners of those firms. It may be true that separate accounts are maintained by partnership firms and that the income tax returns are filed separately. However, prima facie, the Plaintiff has been able to establish that these partnership firms are joint family properties and he would, therefore, have a right in those properties. The onus would lie on the partners i.e. the Defendants herein to prove that the firms were their separate businesses established by them and had nothing to do with Premji Velji Dholi. As held in the case of *Ratan Kumar Poddar and others* vs. *The Howrah Motor Co. Pvt. Ltd. and others*, **AIR 1975 CALCUTTA 18**, when there is prima facie evidence that the members of the Hindu joint family carried on business with the joint family assets in various firms in different names, the onus is on the partners to prove that the firm was their separate business. It is observed that if such partners withhold from the Court the source of their capital for the business, it should be inferred that the business was started with the nucleus of the joint family funds.

6. In the present case, the Plaintiff has established, prima facie, that the source of the income for these firms i.e. Defendant Nos.16, 17 and 18 came

from Premji Velji Dholi and, therefore, he would have every right to a share in these properties.

7. In view of this, interim relief in terms of prayer clauses (a) of the Motion. However, the Defendants may continue with the businesses as agents of the Court Receiver on the usual terms and conditions. Till such time as the Receiver takes possession of the properties mentioned in Exhibit "A", there shall be an injunction in terms of prayer clause (b) of the Motion.

8. On the request of the learned Advocate for the Defendants to stay the order, the order is stayed for a period of three weeks from today.